IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1112 OF 2005

M/s.J.L.Morison (India) Ltd. ..Petitioner.

Vs.

Flora Rego & anr. ..Respondents.

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Mr.R.V.Paranjape for the Petitioner.

Ms.N.D.Buch with Ms.B.B.Dholakia for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

25th April, 2005.

P.C. :

1. The Industrial Court by its order dated 3rd November, 2004 has come to the conclusion that the Petitioner had engaged in an unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Petitioner has been directed to pay salary for the period 25th January, 1994 to 9th March, 1998 to the First Respondent after deducting the suspension

allowance that was paid during the period of suspension together with attendant consequential benefits including encashment of balance privilege leave, statutory bonus at par with what has been paid to other employees, provident fund, gratuity and closure compensation. The amount which has been paid during the pendency of the proceedings is to be adjusted against the outstaindings due and payable.

2. The First Respondent was placed under suspension on 25th January, 1994 and a charge sheet was issued to her on 11th February, 1994. It is an admitted position that no disciplinary proceedings were pursued and that eventually the enquiry came to be dropped on 2nd January, 1996.

3. The Petitioner has contended that on 21st December, 1995 there was a temporary suspension of business operations and on 9th March, 1998 a closure took place. Counsel for the Petitioner fairly states that the undertaking employed more than 100 workmen on the date of suspension of operations. The provisions of Chapter VB of the Industrial Disputes Act, 1947 were, therefore,

squarely attracted. Section 25-M contains a prohibition of lay off and in so far as is material requires the prior permission of the appropriate government unless it is due to shortage of power, a natural calamity and in the case of a mine is also due to fire, flood, excess of inflammable gas or explosion. None of the exceptions was attracted. The expression 'lay off' is defined in Section 2(kkk) of the Industrial Disputes Act, 1947 inter alia to mean the failure, refusal or inability of an employer to give employment to a workman on account of a shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other connected reason. Section 25-J of the Act provides that the provisions of Chapter VA shall have effect notwithstanding anything inconsistent contained in any other law including standing orders made under the Industrial Employment (Standing Order) Act, 1946. In so far Chapter VB is concerned, the corresponding provision is contained in Section 25-S which inter alia attracts the provisions of Section 25-J to industrial establishments which are covered by Chapter VB. In the present case, there has been a

manifest non-compliance with the provisions of Chapter VB. Even if the suspension of operations amounted to a lay off, the employer was clearly under an obligation to comply with the mandatory provisions of Section 25-M. If it was not a lay off, there is clearly no defence in any event to the non-payment of salary to the workman. Once the suspension was revoked, the workman was entitled to the salary for the period until the date of closure which has been ordered by the Industrial Court by its impugned order. The order of the Industrial Court, therefore, does not suffer from any infirmity. The Petition is rejected.